

EXHIBIT 6

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THUNDERWOOD HOLDINGS, INC.,
8 BRIAN DUNNING, and BRIANDUNNING.COM

9
10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN JOSE DIVISION

13 EBAY INC.,) CASE NO. C 08-4052 JF
14 Plaintiff,)
15 vs.)
16 DIGITAL POINT SOLUTIONS, INC.;)
17 SHAWN HOGAN; KESSLER's FLYING)
18 CIRCUS; THUNDERWOOD HOLDINGS,)
19 INC.; TODD DUNNING; DUNNING)
ENTERPRISES, INC.; BRIAN DUNNING;)
BRIANDUNNING.COM; and DOES 1-20,)
Defendants.)

21

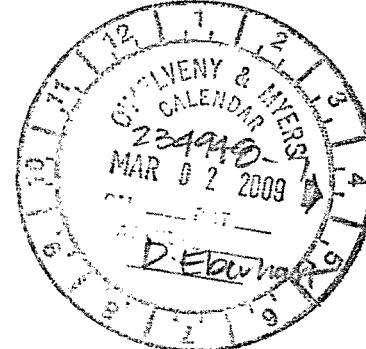
22 PROPOUNDING PARTY: PLAINTIFF EBAY INC.

23 RESPONDING PARTY: DEFENDANT BRIANDUNNING.COM

24 SET NO.: ONE (1)

25 Defendant BrianDunning.com ("Defendant" and/or "Responding Party") hereby
26 responds to the First Set of Requests for Admission (Nos. 1-25) propounded by Plaintiff eBay
27 Inc. ("Plaintiff" and/or "Propounding Party") as follows:

28 / / /



GENERAL STATEMENT

2 Defendant's Motion to Dismiss Plaintiff's First Amended Complaint was
3 granted by Order entered February 24, 2009. As such, Plaintiff's Complaint has been
4 dismissed with leave to amend. No amended complaint has been filed and/or served in
5 this action. As such, there is no pending claim against Defendant and Defendant is not
6 required to respond to Plaintiff's discovery request. In this regard, Defendant requested
7 that Plaintiff acknowledge that no response is required or, in the alternative, grant
8 Defendant an extension of time to respond to the discovery requests until some time after
9 Plaintiff files an amended complaint against Defendant, if at all. Plaintiff refused
10 Defendant's request without explanation. Defendant serves these responses out of an
11 abundance of caution in the event it is determined that such responses are required despite
12 the dismissal of Plaintiff's Complaint against Defendant. Otherwise, Defendant reserves
13 the right to withdraw these responses in total and otherwise object to the use, reference to,
14 or disclosure of these responses in any manner for any purpose.

15 Brian Dunning (“Mr. Dunning”) has invoked his privilege against
16 self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution, *Lefkowitz v.*
17 *Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1, Section 15 of
18 the California Constitution, and California Evidence Code section 940. Since Mr. Dunning is
19 the sole authorized representative of Responding Party, and the only person who can verify
20 discovery responses on behalf of Responding Party, Responding Party cannot provide any
21 verified responses without compromising Mr. Dunning’s right against self-incrimination.

22 Should Mr. Dunning determine that there is no longer the threat of potential
23 criminal prosecution and elect to withdraw his privilege against self-incrimination in the future,
24 Responding Party expressly reserves the right to supplement its responses.

25 Furthermore, the Federal Bureau of Investigation has seized all documents and
26 computers, disk drives, hard drives, cell phones and servers containing information potentially
27 related to this matter. Assistant United States Attorney Kyle F. Waldinger in charge of this
28 investigation has refused all requests to provide Defendants with a copy of the material seized

1 by the FBI. Those items and records may contain information responsive to the requests
2 below, but those items and records are not in the possession, custody or control of Defendants.

3 **RESPONSES**

4 **REQUEST FOR ADMISSION NO. 1:**

5 Admit that briandunning.com conducted business with eBay during at least some
6 portion of 2007.

7 **RESPONSE TO REQUEST FOR ADMISSION NO. 1:**

8 Responding Party objects to this request on the grounds that it violates
9 Mr. Dunning's privilege against self-incrimination pursuant to the Fifth Amendment to the
10 U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence
11 Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code
12 section 940. Responding Party further objects on the ground that this request is vague and
13 ambiguous.

14 **REQUEST FOR ADMISSION NO. 2:**

15 Admit that briandunning.com conducted business with eBay during at least some
16 portion of 2006.

17 **RESPONSE TO REQUEST FOR ADMISSION NO. 2:**

18 Responding Party objects to this request on the grounds that it violates
19 Mr. Dunning's privilege against self-incrimination pursuant to the Fifth Amendment to the
20 U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence
21 Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code
22 section 940.

23 **REQUEST FOR ADMISSION NO. 3:**

24 Admit that briandunning.com conducted business with eBay during at least some
25 portion of 2005.

26 **RESPONSE TO REQUEST FOR ADMISSION NO. 3:**

27 Responding Party objects to this request on the grounds that it violates
28 Mr. Dunning's privilege against self-incrimination pursuant to the Fifth Amendment to the

1 U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence
2 Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code
3 section 940. Responding Party further objects on the ground that this request is vague and
4 ambiguous.

5 **REQUEST FOR ADMISSION NO. 4:**

6 Admit that briandunning.com conducted business with eBay during at least some
7 portion of 2004.

8 **RESPONSE TO REQUEST FOR ADMISSION NO. 4:**

9 Responding Party objects to this request on the grounds that it violates
10 Mr. Dunning's privilege against self-incrimination pursuant to the Fifth Amendment to the
11 U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence
12 Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code
13 section 940. Responding Party further objects on the ground that this request is vague and
14 ambiguous.

15 **REQUEST FOR ADMISSION NO. 5:**

16 Admit that briandunning.com conducted business with eBay during at least some
17 portion of 2003.

18 **RESPONSE TO REQUEST FOR ADMISSION NO. 5:**

19 Responding Party objects to this request on the grounds that it violates
20 Mr. Dunning's privilege against self-incrimination pursuant to the Fifth Amendment to the
21 U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence
22 Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code
23 section 940. Responding Party further objects on the ground that this request is vague and
24 ambiguous.

25 **REQUEST FOR ADMISSION NO. 6:**

26 Admit that briandunning.com participated in an eBay Affiliate Marketing
27 Program or programs.

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1 **RESPONSE TO REQUEST FOR ADMISSION NO. 6:**

2 Responding Party objects to this request on the grounds that it violates
3 Mr. Dunning's privilege against self-incrimination pursuant to the Fifth Amendment to the
4 U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence
5 Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code
6 section 940. Responding Party further objects on the ground that this request is vague and
7 ambiguous.

8 **REQUEST FOR ADMISSION NO. 7:**

9 Admit that, while participating in an eBay Affiliate Marketing Program or
10 programs, briandunning.com utilized software programs and/or code that caused some Users'
11 computers to access an eBay website without the User's knowledge.

12 **RESPONSE TO REQUEST FOR ADMISSION NO. 7:**

13 Responding Party objects to this request on the grounds that it violates
14 Mr. Dunning's privilege against self-incrimination pursuant to the Fifth Amendment to the
15 U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence
16 Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code
17 section 940. Responding Party further objects on the ground that this request is vague and
18 ambiguous.

19 **REQUEST FOR ADMISSION NO. 8:**

20 Admit that, while participating in an eBay Affiliate Marketing Program or
21 programs, briandunning.com utilized software programs and/or code that caused some Users'
22 computers to access an eBay web server without the User's knowledge.

23 **RESPONSE TO REQUEST FOR ADMISSION NO. 8:**

24 Responding Party objects to this request on the grounds that it violates
25 Mr. Dunning's privilege against self-incrimination pursuant to the Fifth Amendment to the
26 U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence
27 Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code

28 / / /

1 section 940. Responding Party further objects on the ground that this request is vague and
2 ambiguous.

3 **REQUEST FOR ADMISSION NO. 9:**

4 Admit that, while participating in an eBay Affiliate Marketing Program or
5 programs, briandunning.com utilized software programs and/or code that redirected a User to
6 an eBay website without the User knowingly clicking on an Advertisement Link.

7 **RESPONSE TO REQUEST FOR ADMISSION NO. 9:**

8 Responding Party objects to this request on the grounds that it violates
9 Mr. Dunning's privilege against self-incrimination pursuant to the Fifth Amendment to the
10 U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence
11 Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code
12 section 940. Responding Party further objects on the ground that this request is vague and
13 ambiguous.

14 **REQUEST FOR ADMISSION NO. 10:**

15 Admit that, while participating in an eBay Affiliate Marketing Program or
16 programs, briandunning.com utilized software programs and/or code that redirected a User to
17 an eBay web server without the User knowingly clicking on an Advertisement Link.

18 **RESPONSE TO REQUEST FOR ADMISSION NO. 10:**

19 Responding Party objects to this request on the grounds that it violates
20 Mr. Dunning's privilege against self-incrimination pursuant to the Fifth Amendment to the
21 U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence
22 Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code
23 section 940. Responding Party further objects on the ground that this request is vague and
24 ambiguous.

25 **REQUEST FOR ADMISSION NO. 11:**

26 Admit that, while participating in an eBay Affiliate Marketing Program or
27 programs, briandunning.com utilized software programs and/or code that performed Cookie
28 Stuffing.

1 **RESPONSE TO REQUEST FOR ADMISSION NO. 11:**

2 Responding Party objects to this request on the grounds that it violates
3 Mr. Dunning's privilege against self-incrimination pursuant to the Fifth Amendment to the
4 U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence
5 Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code
6 section 940. Responding Party further objects on the ground that this request is vague and
7 ambiguous.

8 **REQUEST FOR ADMISSION NO. 12:**

9 Admit that briandunning.com used methods, techniques and/or technological
10 measures to avoid detection by eBay of certain aspects of how briandunning.com interacted
11 with eBay's Affiliate Marketing Program or programs.

12 **RESPONSE TO REQUEST FOR ADMISSION NO. 12:**

13 Responding Party objects to this request on the grounds that it violates
14 Mr. Dunning's privilege against self-incrimination pursuant to the Fifth Amendment to the
15 U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence
16 Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code
17 section 940. Responding Party further objects on the ground that this request is vague and
18 ambiguous.

19 **REQUEST FOR ADMISSION NO. 13:**

20 Admit that briandunning.com used methods, techniques and/or technological
21 measures to avoid detection by Commission Junction of certain aspects of how
22 briandunning.com interacted with eBay's Affiliate Marketing Program or programs.

23 **RESPONSE TO REQUEST FOR ADMISSION NO. 13:**

24 Responding Party objects to this request on the grounds that it violates
25 Mr. Dunning's privilege against self-incrimination pursuant to the Fifth Amendment to the
26 U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence
27 Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code
28 / / /

1 section 940. Responding Party further objects on the ground that this request is vague and
2 ambiguous.

3 **REQUEST FOR ADMISSION NO. 14:**

4 Admit that briandunning.com utilized methods, techniques and/or technological
5 measures to avoid detection by eBay of Cookie Stuffing caused by briandunning.com.

6 **RESPONSE TO REQUEST FOR ADMISSION NO. 14:**

7 Responding Party objects to this request on the grounds that it violates
8 Mr. Dunning's privilege against self-incrimination pursuant to the Fifth Amendment to the
9 U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence
10 Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code
11 section 940. Responding Party further objects on the ground that this request is vague and
12 ambiguous.

13 **REQUEST FOR ADMISSION NO. 15:**

14 Admit that briandunning.com utilized methods, techniques and/or technological
15 measures to avoid detection by Commission Junction of Cookie Stuffing caused by
16 briandunning.com.

17 **RESPONSE TO REQUEST FOR ADMISSION NO. 15:**

18 Responding Party objects to this request on the grounds that it violates
19 Mr. Dunning's privilege against self-incrimination pursuant to the Fifth Amendment to the
20 U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence
21 Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code
22 section 940. Responding Party further objects on the ground that this request is vague and
23 ambiguous.

24 **REQUEST FOR ADMISSION NO. 16:**

25 Admit that, while participating in an eBay Affiliate Marketing Program or
26 programs, briandunning.com utilized software and/or code to determine the geographic
27 location of a User.

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1 **RESPONSE TO REQUEST FOR ADMISSION NO. 16:**

2 Responding Party objects to this request on the grounds that it violates
3 Mr. Dunning's privilege against self-incrimination pursuant to the Fifth Amendment to the
4 U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence
5 Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code
6 section 940. Responding Party further objects on the ground that this request is vague and
7 ambiguous.

8 **REQUEST FOR ADMISSION NO. 17:**

9 Admit that, while participating in an eBay Affiliate Marketing Program or
10 programs, briandunning.com utilized software and/or code to determine whether a User was
11 located in San Jose, CA.

12 **RESPONSE TO REQUEST FOR ADMISSION NO. 17:**

13 Responding Party objects to this request on the grounds that it violates
14 Mr. Dunning's privilege against self-incrimination pursuant to the Fifth Amendment to the
15 U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence
16 Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code
17 section 940. Responding Party further objects on the ground that this request is vague and
18 ambiguous.

19 **REQUEST FOR ADMISSION NO. 18:**

20 Admit that, while participating in an eBay Affiliate Marketing Program or
21 programs, briandunning.com utilized software and/or code to determine whether a User was
22 located in Santa Barbara, CA.

23 **RESPONSE TO REQUEST FOR ADMISSION NO. 18:**

24 Responding Party objects to this request on the grounds that it violates
25 Mr. Dunning's privilege against self-incrimination pursuant to the Fifth Amendment to the
26 U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence
27 Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code

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1 section 940. Responding Party further objects on the ground that this request is vague and
2 ambiguous.

3 **REQUEST FOR ADMISSION NO. 19:**

4 Admit that, while participating in an eBay Affiliate Marketing Program or
5 programs, briandunning.com utilized software and/or code that would disable or not engage
6 briandunning.com's Cookie Stuffing technology if a User's computer was located in San Jose,
7 CA.

8 **RESPONSE TO REQUEST FOR ADMISSION NO. 19:**

9 Responding Party objects to this request on the grounds that it violates
10 Mr. Dunning's privilege against self-incrimination pursuant to the Fifth Amendment to the
11 U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence
12 Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code
13 section 940. Responding Party further objects on the ground that this request is vague and
14 ambiguous.

15 **REQUEST FOR ADMISSION NO. 20:**

16 Admit that, while participating in an eBay Affiliate Marketing Program or
17 programs, briandunning.com utilized software and/or code that would disable or not engage
18 briandunning.com's Cookie Stuffing technology if a User's computer was located in Santa
19 Barbara, CA.

20 **RESPONSE TO REQUEST FOR ADMISSION NO. 20:**

21 Responding Party objects to this request on the grounds that it violates
22 Mr. Dunning's privilege against self-incrimination pursuant to the Fifth Amendment to the
23 U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence
24 Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code
25 section 940. Responding Party further objects on the ground that this request is vague and
26 ambiguous.

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1 **REQUEST FOR ADMISSION NO. 21:**

2 Admit that briandunning.com received commissions from eBay, whether directly
3 or through Commission Junction, that were based, in whole or in part, on Users whose
4 computers were directed to eBay's website without the User's knowledge.

5 **RESPONSE TO REQUEST FOR ADMISSION NO. 21:**

6 Responding Party objects to this request on the grounds that it violates
7 Mr. Dunning's privilege against self-incrimination pursuant to the Fifth Amendment to the
8 U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence
9 Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code
10 section 940. Responding Party further objects on the ground that this request is vague and
11 ambiguous.

12 **REQUEST FOR ADMISSION NO. 22:**

13 Admit that briandunning.com received commissions from eBay, whether directly
14 or through Commission Junction, that were based, in whole or in part, on Users who had never
15 actually clicked on a briandunning.com-sponsored eBay advertisement link.

16 **RESPONSE TO REQUEST FOR ADMISSION NO. 22:**

17 Responding Party objects to this request on the grounds that it violates
18 Mr. Dunning's privilege against self-incrimination pursuant to the Fifth Amendment to the
19 U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence
20 Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code
21 section 940. Responding Party further objects on the ground that this request is vague and
22 ambiguous.

23 **REQUEST FOR ADMISSION NO. 23:**

24 Admit that briandunning.com received commissions from eBay, whether directly
25 or through Commission Junction, that were based, in whole or in part, Cookie Stuffing caused
26 by briandunning.com.

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1 **RESPONSE TO REQUEST FOR ADMISSION NO. 23:**

2 Responding Party objects to this request on the grounds that it violates
3 Mr. Dunning's privilege against self-incrimination pursuant to the Fifth Amendment to the
4 U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence
5 Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code
6 section 940. Responding Party further objects on the ground that this request is vague and
7 ambiguous.

8 **REQUEST FOR ADMISSION NO. 24:**

9 Admit that briandunning.com engaged in Cookie Stuffing with the intent to
10 defraud eBay.

11 **RESPONSE TO REQUEST FOR ADMISSION NO. 24:**

12 Responding Party objects to this request on the grounds that it violates
13 Mr. Dunning's privilege against self-incrimination pursuant to the Fifth Amendment to the
14 U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence
15 Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code
16 section 940. Responding Party further objects on the ground that this request is vague,
17 ambiguous, and constitutes a legal conclusion.

18 **REQUEST FOR ADMISSION NO. 25:**

19 Admit that briandunning.com defrauded eBay.

20 **RESPONSE TO REQUEST FOR ADMISSION NO. 25:**

21 Responding Party objects to this request on the grounds that it violates
22 Mr. Dunning's privilege against self-incrimination pursuant to the Fifth Amendment to the
23 U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence
24 Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code

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1 section 940. Responding Party further objects on the ground that this request is vague,
2 ambiguous, and constitutes a legal conclusion.

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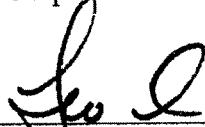
4 DATED: February 26, 2009

RUS, MILIBAND & SMITH
A Professional Corporation

5

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By:


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Attorneys for Defendants

Thunderwood Holdings, Inc., Brian Dunning
and BrianDunning.com

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PROOF OF SERVICE

eBay, Inc. v. Digital Point Solutions, Inc., et al.
Northern District of California, San Jose Division
Case No. C 08-4052 JF

STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 2211 Michelson Drive, Seventh Floor, Irvine, California 92612.

On February 26, 2009, I served the foregoing documents described as **RESPONSES OF DEFENDANT BRIANDUNNING.COM TO FIRST SET OF REQUESTS FOR ADMISSION PROPOUNDED BY PLAINTIFF EBAY, INC.** on the interested parties in this action by placing a copy thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

12 ✓ As follows: I am "readily familiar" with the firm's practice of collection and processing
13 correspondence for mailing. Under that practice, it would be deposited with U.S.
14 Postal Service on that same day with postage thereon fully prepaid at Irvine, California
15 in the ordinary course of business. I am aware that on motion of the party served,
16 service is presumed invalid if postal cancellation date or postage meter date is more than
17 one day after date of deposit for mailing in affidavit.
18 — (By E-Mail) As follows: I caused the above-referenced document(s) to be transmitted to
19 the above-named persons.
20 — (By Facsimile) As follows: I caused the above-referenced document(s) to be transmitted
21 to the above-named persons by facsimile.
22 — (By Hand Delivery) As follows: I caused the above-referenced document(s) to be hand
23 delivered to the above-named persons.
24 — (By Overnight Delivery) As follows: By overnight delivery via Overnite Express
25 and/or Federal Express to the office of the addressee noted on the attached service list.

Executed on February 26, 2009, at Irvine, California.

25 (Federal) I declare that I am employed in the office of a member of the bar of this court
at whose direction the service was made.

RHONDA RADFORDE

SERVICE LIST

*eBay, Inc. v. Digital Point Solutions, Inc., et al.
Northern District of California, San Jose Division
Case No. C 08-4052*

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